

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:)	Case No. 03-21241
)	
MILLIE R. WYNN,)	Chapter 7
)	
Debtor.)	
)	
UNITED STATES TRUSTEE,)	
)	Adversary Proceeding No. 03-1479
Plaintiff,)	
v.)	Judge Arthur I. Harris
)	
TONIA SCALES-ASOYE,)	
)	
Defendant.)	

MEMORANDUM OF OPINION

On November 17, 2003, the U.S. Trustee filed the above-captioned adversary proceeding against Tonia Scales-Asoye. The U.S. Trustee seeks the imposition of fines and injunctive relief against Asoye for alleged violations of 11 U.S.C. § 110—a section of the Bankruptcy Code which governs the activities of bankruptcy petition preparers—*i.e.*, persons, other than an attorney or an employee of an attorney, who prepare for compensation a document for filing. On February 11, 2004, the U.S. Trustee filed a motion for a default judgment pursuant to Bankruptcy Rule 7055 and Rule 55 of the Federal Rules of Civil Procedure, based upon Asoye’s failure to answer or otherwise respond to the adversary complaint. (Docket #10) For the reasons that follow, the U.S. Trustee’s motion

for a default judgment is granted in part and denied in part.

BACKGROUND

According to the adversary complaint, Asoye is a “bankruptcy petition preparer” as that term is defined in 11 U.S.C. § 110(a)—*i.e.*, “a person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing.” On August 25, 2003, the debtor, Millie R. Wynn, filed a voluntary petition under Chapter 7 of the Bankruptcy Code. Asoye prepared the bankruptcy petition, but did not list her real social security number on Wynn’s petition. Asoye read from a form and asked the debtor questions with respect to her assets and liabilities. Asoye chose the debtor’s exemptions under Schedule C. Asoye advised the debtor to file a reaffirmation agreement regarding a car loan to prevent a codebtor from being held responsible for this debt. Asoye collected \$500 from the debtor, which included \$200 for the filing fee. Asoye filed the petition on behalf of the debtor. *See* Complaint (Docket #1) at ¶¶8-19.

The U.S. Trustee’s Complaint contains five counts. Count I seeks an order permanently enjoining Asoye from the illegal and unauthorized practice of law, pursuant to 11 U.S.C. §§ 105 and 110. Count II seeks a fine of not more than \$500 for Asoye’s failure to include her real social security number on the debtor’s petition, in violation of 11 U.S.C. § 110(c). Count III seeks a fine of not more

than \$500 for Asoye's collection of court fees from the debtor, in violation of 11 U.S.C. § 110(g). Count IV seeks an order requiring Asoye to turn over to the Chapter 7 trustee any fees Asoye received in excess of the value of services rendered for the documents prepared, pursuant to 11 U.S.C. § 110(h). Count V seeks an order enjoining Asoye from engaging in fraudulent, unfair, or deceptive conduct, pursuant to 11 U.S.C. § 110(j)(2)(A)(i)(III).

Also relevant to this motion is the Court's order (Main Case Docket #26), dated February 9, 2004, finding Asoye in civil contempt for Asoye's failure to comply with two of this Court's orders (Main Case Docket ## 10, 15) requiring her to attend an examination pursuant to Bankruptcy Rule 2004 in the office of the U.S. Trustee. That contempt order prohibits Asoye

from performing any services as a bankruptcy petition preparer in the Northern District of Ohio until such time as: (1) the U.S. Trustee has concluded an examination of her pursuant to Bankruptcy Rule 2004, and (2) she has paid in full all fines imposed on her pursuant to 11 U.S.C. § 110.

Order (Main Case Docket #26). Asoye has yet to purge herself of that civil contempt order.

DISCUSSION

Bankruptcy Rule 7055 incorporates Rule 55 of the Federal Rules of Civil Procedure to adversary proceedings. The U.S. Trustee's motion for a default

judgment is governed by Fed. R. Civ. P. 55(b)(2) and relevant case law. Although a defaulting defendant is deemed to admit every well-pleaded allegation in the complaint, the court is required to make an independent determination of the relief to be awarded unless the amount of damages is certain. In ruling on a motion for a default judgment, the court may rely on detailed affidavits or documentary evidence to determine the appropriate sum for the default judgment. When the damages cannot be calculated with relative simplicity, however, the court may order an evidentiary hearing. *See generally KPS & Assoc., Inc. v. Designs by FMC, Inc.*, 318 F.3d 1, 17-21 (1st Cir. 2003); *Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp.*, 109 F.3d 105, 111 (2d Cir. 1997) ; *Antoine v. Atlas Turner, Inc.*, 66 F.3d 105, 110-11 (6th Cir. 1995); *Int'l Painters & Allied Trades Indus. Pension Fund v. R.W. Amrine Drywall Co.*, 239 F.Supp.2d 26, 30 (D.D.C. 2002).

COUNTS I AND V

In the present case, even taking the U.S. Trustee's well-pleaded allegations as true, the Court does not find that current circumstances justify the imposition of the injunctive relief requested in Counts I and V. The Court makes this determination in light of the existing injunction, which already prohibits Asoye

from performing any services as a bankruptcy petition preparer in the Northern District of Ohio until such time as: (1) the U.S. Trustee has concluded an examination of her pursuant to Bankruptcy Rule 2004, and (2) she has paid in full all fines imposed on her pursuant to 11 U.S.C. § 110.

Order Finding Tonia Scales-Asoye in Civil Contempt (Feb. 9, 2004)(Main Case Docket #26). In the absence of Asoye purging herself of civil contempt, the existing bar is already tantamount to arguably the strongest injunctive relief available under 11 U.S.C. § 110—*i.e.*, an order enjoining the person from acting as a bankruptcy petition preparer altogether, a sanction only appropriate when less restrictive conditions would not suffice. *See* 11 U.S.C. § 110(j)(2)(B). Given the existing injunction, and given the small likelihood that Asoye will both purge herself of the existing contempt order *and* seek to engage in further work as a petition preparer, the Court does not believe that further injunctive relief “is appropriate to prevent the recurrence of such conduct.” 11 U.S.C.

§ 110(j)(2)(A)(ii). If the U.S. Trustee nevertheless believes that further injunctive relief against Asoye is necessary in the context of this adversary proceeding, the U.S. Trustee may file a timely motion to alter or amend, pursuant to Bankruptcy Rule 9023, or a timely motion for relief from judgment, pursuant to Bankruptcy Rule 9024.

COUNTS II AND III

For violation of 11 U.S.C. § 110(c), the court “may” impose a fine of not more than \$500. For violation of 11 U.S.C. § 110(g), the court “shall” impose a fine of not more than \$500. The amount of the sanction is within the court’s discretion. *See In re Alexander*, 284 B.R. 626, 634 (Bankr. N.D. Ohio 2002). Because the complaint does not allege prior violations of 11 U.S.C. § 110 by Asoye, the Court finds that a fine of \$100 is appropriate for Asoye’s violation of 11 U.S.C. § 110(c) in Count II, and that a similar fine of \$100 is appropriate for Asoye’s violation of 11 U.S.C. § 110(g) in Count III.

COUNT IV

Pursuant to 11 U.S.C. § 110(h), the court “shall disallow and order the immediate turnover to the bankruptcy trustee of any fee . . . found to be in excess of the value of services rendered for the documents prepared.” The U.S. Trustee seeks the turnover of the full \$300 that Asoye received from the debtor beyond the \$200 received for filing fees; however, there is nothing in the complaint to suggest that the value of Asoye’s services in preparing the documents should be placed at \$0. After conducting an evidentiary hearing and reviewing analogous cases, Judge Whipple concluded that the petition preparer in *In re Alexander* should turn over fees in excess of \$200, pursuant to 11 U.S.C. § 110(h). *See* 284 B.R. at 634-38.

This Court finds, based upon its review of the documents prepared by Asoye in this case and Judge Whipple's analysis in *In re Alexander*, that Asoye should be required to turn over to the trustee any fees collected in excess of \$200,—i.e., \$100, pursuant to 11 U.S.C. § 110(h).

CONCLUSION

For the foregoing reasons, the U.S. Trustee's motion for a default judgment is granted in part and denied in part. Tonia Scales-Asoye is fined a total of \$200—\$100 for violation of 11 U.S.C. § 110(c) and \$100 for violation of 11 U.S.C. § 110(g). Payment of the \$200 in fines shall be made to the Clerk of this Court. In addition, Tonia Scales-Asoye is ordered to turnover \$100 immediately to the Chapter 7 Trustee, Steven S. Davis, pursuant to 11 U.S.C. § 110(h).

IT IS SO ORDERED.

/s/ Arthur I. Harris 03/26/2004
Arthur I. Harris
U.S. Bankruptcy Judge